Lam Kong Co Ltd v Thong Guan Co Pte Ltd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-02-29 OF 1998
LAMIN PCA, ABDUL MALEK AHMAD AND AHMAD FAIRUZ JJCA
24 NOVEMBER 1999

Civil Procedure *— Appeal — Leave to appeal — Appeal to Court of Appeal — Subject matter below RM250,000 — Damages added to value of subject matter caused total value to be unknown — Whether declaration prayed would come within terms of Court of Appeal Practice Direction No 2 of 1996 relating to 'declarations' whereby no leave would be required — Court of Appeal Practice Direction No 2 of 1996 item (ii) — Courts of Judicature Act 1964 s 68(1)*

The respondent applied for an order that the appellant's appeal filed on 7 January 1998 be dismissed on the ground that it was filed without first obtaining the leave of the court as required by s 68(1)(a) of the Courts of Judicature Act 1964 ('the Act'). Counsel for the appellant argued, inter alia, that: (a) the declaration prayed for in the statement of claim would come within the terms of the Court of Appeal Practice Direction No 2 of 1996 item (ii) relating to 'declarations' and so no leave would be required; and (b) the damages prayed in the statement of claim should be added to the value of the subject matter so that the total value would be unknown, thus it would pass the test laid down in s 68(1)(a) of the Act.

Held, allowing the application:

(1) The declarations as described in Court of Appeal Practice Direction No 2 of 1996 item (ii) are those that relate to subject matters which either do not have any value attached to them or its value cannot be quantified (see p 132C). The subject matter in this case, however, was a sale and purchase agreement which values at below RM250,000. Thus, it falls squarely within the requirement of s 68(1)(a) of the Act which requires leave to be obtained before an appeal can be filed (see p 131H–I).

(2) Section 68(1)(a) of the Act clearly specifies that the 'value' that is required to be quantified must be the 'value' of the subject-matter 'of the claim'. The damages prayed for in this case was merely consequential and do not form the 'subject matter of the claim' (see p 132E–F).

[Bahasa Malaysia summary

Responden telah memohon untuk suatu perintah bahawa rayuan perayu yang difailkan pada 7 Januari 1998 ditolak atas alasan bahawa ia telah difailkan tanpa terlebih dahulu memperoleh kebenaran mahkamah sebagaimana yang diperuntukkan oleh s 68(1)(a) Akta Kehakiman Mahkamah 1964 ('Akta tersebut'). Peguam bagi pihak

perayu menghujahkan, antara lain, bahawa: (a) deklarasi yang dipohon di dalam pernyataan tuntutan terangkum di bawah terma-terma kepada butiran (ii) Arahan Amalan Mahkamah Rayuan No 2 bagi tahun 1996 yang berhubung dengan 'deklarasi-deklarasi' dan oleh demikian tiada kebenaran diperlukan; dan (b) ganti rugi yang dipohon di dalam pernyataan tuntutan tersebut hendaklah ditambah kepada nilai perkara pokok itu; maka keseluruhan nilai tersebut akan tidak diketahui. Oleh demikian, ia akan lulus ujian sebagaimana yang dinyatakan di dalam s 68(1)(a) Akta tersebut.

Diputuskan, membenarkan permohonan tersebut:

(1) Deklarasi-deklarasi sebagaimana yang dinyatakan di dalam butiran (ii) Arahan Amalan Mahkamah Rayuan No 2 bagi tahun 1996 adalah yang berkaitan dengan perkara-perkara pokok yang sama ada tiada apa-apa nilai padanya ataupun nilainya tidak boleh dinyatakan kuantitinya (lihat ms 132C). Perkara pokok di dalam kes ini, bagaimanapun, merupakan satu perjanjian jual beli yang bernilai kurang daripada RM250,000. Oleh itu, ia terangkum dalam keperluan s 68(1)(a) Akta tersebut yang memerlukan kebenaran diperolehi sebelum suatu rayuan boleh difailkan (lihat ms 131H–I).

(2) Seksyen 68(1)(a) Akta tersebut dengan jelas menetapkan bahawa 'nilai' yang diperlukan untuk ia boleh dinyatakan kuantititnya mestilah 'nilai' perkara pokok 'tuntutan tersebut'. Ganti rugi yang dipohon di dalam kes ini hanyalah penting dan tidak membentuk 'perkara pokok tuntutan tersebut' (lihat ms 132E–F).]

Notes

For cases on leave to appeal, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 668–709.

Cases referred to

Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh [1996] 2 MLJ 329 (refd)

Legislation referred to

Court of Appeal Practice Direction No 2 of 1996 item (ii)
Courts of Judicature Act 1964 s 68(1)(a)

M Pathmanathan (*Gan Techiong* with him)(*Gan & Lim*) for the respondent.

R Abraham (*S Sothi* with him) (*Brockett & Cho*) for the appellant.

Lamin PCA (delivering judgment of the court): There were three applications before us namely encls (7a), (8a) and (11a). Enclosure (7a) was an application by the appellant for leave to file an additional record of

A appeal. Enclosure (8a) was an application also by the appellant for a stay of the order made by the High Court on 29 December 1997 pending the final disposal of the appeal by this court on the said order. Enclosure (11a) was an application by the respondent praying for an order that the appellant's appeal filed in this court on 7 January 1998 be dismissed on the ground that it was filed without first obtaining the leave of this court and therefore
B incompetent.

The three applications came before us on 28 May 1998. We decided to hear encl 11a first as the fate of the other two applications would depend on the outcome of the application in encl (11a). We unanimously allowed the application with costs. The notice of appeal was struck out. Accordingly,
C the motions in encls (7a) and (8a) must be dismissed and we therefore dismissed them but with no order as to costs.

If we may briefly state the background of this case which is as follows. The respondent (the plaintiff below) on 28 July 1997 entered into a sale and purchase agreement with the appellant (defendant below) wherein the
D respondent agreed to purchase 26 pieces of land situate at Jln Pandan in the District of Johore Bahru, Johore in the Mukim of Tebrau at the price of S$52,000 (see agreement p 14 of encl (11a)). The respondent paid the full purchase but for several years the directors of the appellant could not be located in order to facilitate the transfer. The respondent then filed a writ at the Johore Bahru High Court against the appellant. Upon service being
E effected with the original statement of claim, the appellant failed to enter appearance. The respondent thereby entered default judgment on 14 January 1980. On 22 March 1982, upon the respondent's application, the senior assistant registrar executed the instruments of transfer and authorised the respondent to apply to the Collector of Land Revenue, Johore for the issuance of new issue documents of title. On 28 October
F 1984, the collector of land revenue issued new issue documents of title to the respondent. But due to some error, the transfer was only effected in respect of 25 pieces out of 26. The last title was still in the possession of the appellant. However, the default judgment dated 14 January 1980 was subsequently set aside by the Federal Court on 10 May 1985 thereby rendering it necessary to proceed to trial. For the purpose of the trial an
G amended statement of claim was filed (see p 20 of encl (8a)) and a decision of the court was delivered on 29 December 1997 (see p 16 of encl (7a)).

Section 68(1) of the Courts of Judicature Act 1964 ('the Act') states that no appeal shall be brought to the Court of Appeal:

H (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit except with the leave of the Court of Appeal.

It is disputed that the value of the subject matter in this case which was the value of the contract price was below RM250,000 and we are of the view that it falls squarely within the requirement of s 68(1)(a) of the Act in that
I leave must first be obtained before an appeal can be filed. Learned counsel for the applicant/appellant in respect of encls (7a) and (8a) however argued that the declaration prayed for in the statement of claim would come within

the terms of the Court of Appeal Practice Direction No 2 of 1996 relating to 'declarations' and so no leave would be required. The said practice direction lays down the types of declarations in respect of which leave is not required thus:

> (ii) Deklarasi — untuk mengisytiharkan bahawa sesuatu pemberian lesen, perbuatan, peninggalan atau keputusan sesuatu badan atau mana-mana orang yang diberi kuasa oleh undang-undang adalah tidak sah dan terbatal.
>
> [*Translation*:
>
> (ii) Declarations — to declare that the giving of a licence, an act, an omission or decision of a body or person empowered by law is invalid and annulled.]

It is quite clear to us that the declarations as described above are those that relate to subject matters which either do not have any value attached to them or its value cannot be quantified. In the case before us, the subject-matter was the sale and purchase agreement with a contract price relating to the sale price of the 26 pieces of land.

Learned counsel for the applicant/appellant also urged us that the damages prayed for in prayer (vi) in the statement of claim should be added to the value of the subject matter so that the total value would be unknown thus it would pass the test laid down in s 68(1)(a) of the Act and therefore leave would not be required. We, however, were unable to accept such a proposition for the reason that s 68(1)(a) of the Act clearly specifies that the 'value' that is required to be quantified must be the 'value' of the subject-matter 'of the claim'. The damages as prayed in prayer (vi) are only consequential. They are not the 'subject matter of the claim'.

In his final submission, the learned counsel for the applicant/appellant asked the court that he be allowed to file a motion for leave. We thought it was too late in the day for the request to be entertained. The said Practice Direction was issued in 1996, while the present applications were filed two years later. To interpret item (ii) of the said Practice Direction against s 68(1)(a) of the Act is not a difficult task. The case of *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 was cited to us in support of the proposition that an appeal the subject matter of which comes within the terms of s 68(1)(a) of the Act where the value is less than RM250,000 is incompetent. The Court of Appeal in this case decided as to the meaning of the words 'the amount of the claim' or 'the value of the subject matter of the claim' as found in s 68(1)(a) of the Act. It decided that the 'amount' or 'value' must be 'the total amount of the claim in the action which has been adjudged to be payable' or the value of the subject matter of the claim 'in the action which has been adjudged as recoverable because it is against the judgment (and not against the claim made by the claimants in the pleadings)'. That case was decided on 6 April 1996 which was before the issuance of the said practice direction. (They were issued on 27 June 1996). In the present case, the whole action had been disposed of. The purchase price of the land was S$52,000 which was below RM250,000) as in the agreement. Even if the 26 issue documents of title were to be taken

A as the subject-matter of the claim, they must still be considered as having value because they relate to those 26 pieces of land as referred to in the sale and purchase agreement which stipulated the total price. In the *Amer Mohideen Dawood*'s case, the value of the subject matter of the order for specific performance of the sale and purchase agreement of 14 September 1989 was the purchase price of the land which was RM99,000. Being below
B RM250,000, the court ruled that the appeal was therefore incompetent as no leave to appeal was obtained from the Court of Appeal. In the case before us it was the matter of declaration that added another facet to the case. Once the 'subject matter of the claim' has been identified and its value determined, the question of declaration becomes a non-issue.

C *Application allowed.*

Reported by Benjamin Yong

D

E

F

G

H

I